

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SAMUEL HAYWOOD MYLES,

Plaintiff,

v.

CIVIL ACTION NO. 1:06CV97
(Judge Keeley)

MARY BARBER, A. GONZALEZ,
AND D. GILL,

Defendants.

MEMORANDUM OPINION AND ORDER
ADOPTING REPORT AND RECOMMENDATION

I. BACKGROUND

On June 21, 2006, Samuel Haywood Myles ("Myles"), the *pro se* plaintiff, filed a civil rights complaint alleging that he was discharged from his prison commissary job in retaliation for exercising his First Amendment right of freedom of speech. Myles alleges that his supervisor rarely spoke to him and that she never thanked him for the work he did in the commissary. He asserts that, on December 7, 2005, he verbally confronted her about her "bad attitude." Shortly thereafter, he was discharged from his commissary job. On October 10, 2006, United States Magistrate Judge James E. Seibert entered a Report and Recommendation ("R&R") recommending that Myles' complaint be dismissed for failure to state a claim. On November 27, 2006, Myles filed objections to the

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R&R, reasserting the factual grounds of his complaint and attaching exhibits. Myles did not, however, object to the Magistrate Judge's legal conclusions.

This Court reviews any objections to the Report and Recommendation de novo but may adopt any parts of the R&R not objected to without detailed review. Myles' failure to object to the recommendation on an issue results in the waiver of his appellate rights on that issue.

II. ANALYSIS

Because Myles failed to object to the Magistrate Judge's legal conclusions, this Court is not required to conduct a de novo review on that issue. However, even if this Court were to review the case law de novo, the Court would find that the Magistrate Judge properly applied the controlling legal standard from Pell v. Procunier, 417 U.S. 817, 822 (1974). Even if every allegation in the complaint were true, the limited First Amendment rights retained by Myles while incarcerated were not violated.

Consequently, this Court **ADOPTS** Magistrate Judge Seibert's Report and Recommendation in its entirety and **ORDERS** Myles' complaint be **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

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The Clerk is directed to mail a copy of this Order to the pro
se plaintiff, certified mail, return receipt requested.

Dated: October 25, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE